

Chairman Snow New Business – This would be W 49-22763 and W 49-22764 Indiana Wholesale Wine & Liquor Company, Inc. Do we have representatives here to support the particular petition? Why don't you come forward and identify yourself for the record and take the time you need to talk to us, Peter. Also, I would like to have my commissioners to feel free, as usual, to ask questions if you have any. I do not possess all the questions that may need asked, maybe no questions need to be asked at all. Also, if my executive secretary, do you have anything you wish to add, feel free to do it. We'll keep it as informal/informative as possible. Yes, sir? You are...

Peter Rusthoven Peter Rusthoven with Barnes and Thornburg. We're representing Indiana Wholesale Wine & Liquor Company. With me is Jim Howard, who is the longtime president of that company, which has done business in Indiana for 22 years. This is a proposal to transfer location of permit from where they currently are to a building that is owned by EF Transit, Inc. It is a large warehouse where a certain space will be leased in that warehouse, designated for Indiana Wholesale Wine & Liquor. (Inaudible) technical problems with the application. I can answer any questions.

Frank Guthrie Has our Excise division done any inspection of the premises, or...

Snow I think I was intending to order an investigation at least after today's proceedings.

Guthrie Okay. That's coming. All right.

Snow That's no secret. There's going to be any moment now when you're done there's going to be someone speaking in opposition to this. We just need to figure out where the battle lines are being drawn and what the issues are. But, I anticipate having Excise...

Rusthoven Absolutely. Are there any other questions?

Snow Very well.

Rusthoven The only courtesy I'd ask, though I understand the Commission doesn't want to get into all of the gory detail today, but just for the record after, if anyone does speak in opposition I will have an opportunity to respond.

Snow Absolutely.

Rusthoven Thank you.

Snow Also, I foresee the possibility of a briefing schedule, perhaps if some laws are (inaudible) legal issues, cause I'd like to do this as thoroughly as humanly possible and correctly, if at all possible. Anyone in opposition? Yes, sir.

Jim Purucker Mr. Chairman, members of the Commission, thank you. My name is Jim Purucker. I come before you today representing the Wine and Spirits Wholesalers of Indiana. I've submitted a written communication to the Commission several months ago about this issue that identifies several statutes and that I think run afoul, or this proposal runs afoul. But, I just think...would request that you take extreme caution as you look at this. Be very thorough, because Mr. Rusthoven indicated that this is simply a big warehouse owned by EF Transit and it's no

different than 100,000 other warehouses in this state, with the exception of one small detail. EF Transit is the same, has the same corporate structure and is owned, as Monarch Beverage and Monarch Beverage also operates out of that warehouse and this is, I'd suggest, a lot more about Monarch Beverage than it is Indiana Wholesale. This is just the latest attempt by Monarch to get into the spirits' business. They've been to the legislature three or four times. They've been before this commission a year and a half ago, two years ago, with then Exchange Distributing. And, while they might have addressed some of the specifics that the commission dealt with in the Exchange Distributing situation, I'd just ask you to look at the old adage that if it looks like a duck, it quacks like a duck, it's a duck. The legislature, I think, has been very clear and the public policy that states very clear that there is a bright line between liquor wholesalers and beer wholesalers. We can have beer and wine in the same house. We can have liquor and wine at the same house. But, we can't have beer and liquor. There's a lot of differences. First and foremost is the economics of the two businesses are extremely different. As you look at the infrastructure that has been built by Monarch Beverage, it's built on a system of franchise protected, exclusive territory protected beer. That's a lot different than spirits and wine. The spirits' business has no franchise protection. We have to make infrastructure decisions in a lot different ways. And, if Indiana Wholesale wants to be a statewide wholesaler with Monarch's

distribution network, then they need to go out and build it. They shouldn't use...they shouldn't have the benefit of what Monarch has built with beer money. So, with that, I look forward to continuing this discussion with the commission. We'll be retaining counsel, as you say, "lawyer up" to make sure there's a bunch more suits here than next four or five meetings to make your holidays nice. I'd be happy to answer any questions and would look forward to dealing with this.

Snow In an effort to continue transparency on the commission's behalf, I do note July 16, 2009, a written correspondence directed to the Chair and the Executive Secretary with your signature on it, Jim. I immediately, I don't know who I sent it to. It could have been Marc. I sent it to counsel, someone for the other side.

Purucker As did I.

Snow I just wanted to make sure...that sets forth, at least the beginning volley of your opposition in terms of legal research, that type of thing. Also, just for everybody to know, I have gone back to March 2008, this is for informational purposes, but I try to be thorough, but I looked through what went on before. There was even a public hearing with lots of legal argument back and forth, excellent exchanges of ideas. I have read through that transcript. I will make that available if anybody would want that. I'm not sure it's going to be all that important to you, but I wanted you to know at least some of the...and I looked at some briefing that was done on that. So, I'm trying to

get up to speed, game speed, with you. That's the history of it. This has changed. I know this presents a different set of, probably a different set of facts. And, further for record purposes, I have, we've had conversations with Monarch people and Mr. Rusthoven on this as well.

Purucker Unfortunately, we're having to retain new counsel this time, so we'll be getting them up to speed and going very shortly as we get your schedule and will continue it. I tease Phil about being the energizer bunny. He just keeps coming back and coming back and coming back. This is, I guess, the next and latest variation of this. The thing I'd leave you with is this is really is this is a legislative matter, not a...and they're asking this to be done over here and not over at the legislature, where they have been unsuccessful. With that, I'd be happy to answer any questions.

Snow Any questions from commissioners?

Dale Sturtz Is this Kenny Kragan reincarnated?

Purucker This is somebody else's lifelong dream this time. I think. But, yes, I think this is the latest variation of that.

Snow Thank you very much, sir. Further statements in opposition?

Rusthoven Thank you. We'll not get into all the detail here. I'll point to the Commission just to start us to think about this. This is not Kenny Kragan in any of his incarnations. Indiana Wholesale has its own customers. Indiana Wholesale is not in any way financially related to Monarch, or to EF Transit. Indiana Wholesale has been in business for 22 years, sometimes an

eventful 22 years, because some of the people Mr. Purucker works for tried to keep us out of business. That's all been resolved. I do not care if EF Transit is owned by people who also own a laundry business, or a grocery store, or real estate. Indiana Wholesale doesn't care. We are paying for wholesale space and delivery services. No Monarch salesmen are going on any trips with our people. This is not Kenny Kragan reincarnated. Monarch and EF Transit do not share in our profits. They get a lease payment and they get delivery service payment. They are not tied to our profits. And, as you will see, this is not a legislative issue. We're just renting space and delivery services. It happens that EF Transit owns a very, very big building. That gives us opportunities for expansion and they are looking to rent some. But, we are not going into any kind of business with Monarch. With that said, that's just so the Commission knows the basic layout here.

Snow Appreciate it.

Rusthoven And, then, we'll have fun with Mr. Purucker's new counsel.

Snow Well, battle lines have been drawn. Very well. We'll have Excise do that investigation report, Superintendent Huskey, if you please. We'll hold this matter under advisement. My Executive Secretary, Ed, you were going to contact, I think, some of the attorneys that we know that are going to be involved.

Ed Dunsmore On both sides (inaudible).

Snow We're going to try to follow statutory procedure and make it
fair to everybody.

Dunsmore Not on both sides, on one side—Indiana and Monarch.

Snow Okay. Then, once we get lawyered up, we'll send things down
(inaudible). Very good. Thank you very much.